

ESTTA Tracking number: **ESTTA770754**

Filing date: **09/14/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following parties oppose registration of the indicated application.

Opposers Information

Name	Jazzy Boba, LLC
Granted to Date of previous extension	09/14/2016
Address	2640 SW 54th Street Fort Lauderdale, FL 33312 UNITED STATES

Name	Vapexplosion, LLC
Granted to Date of previous extension	09/14/2016
Address	2640 SW 54th Street Fort Lauderdale, FL 33312 UNITED STATES

Attorney information	Alexander Merino, Esq. Merino Yebri LLP 1925 Century Park East, Suite 2140 Los Angeles, CA 90067 UNITED STATES amerino@mylawllp.com Phone:310-551-2000
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Applicant Information

Application No	86771515	Publication date	05/17/2016
Opposition Filing Date	09/14/2016	Opposition Period Ends	09/14/2016
Applicant	Marina Vape, LLC 4943 McConnell Ave, Suite N Los Angeles, CA 90066 UNITED STATES		

Goods/Services Affected by Opposition

Class 034. First Use: 2014/12/29 First Use In Commerce: 2014/12/29
All goods and services in the class are opposed, namely: Chemical flavorings in liquid form used to refill electronic cigarette cartridges; Electronic cigarette liquid (e-liquid) comprised of flavorings in liquid form, other than essential oils, used to refill electronic cigarette cartridges; Cartridges sold filled with chemical flavorings in liquid form for electronic cigarettes

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Applicant not rightful owner of mark for identified goods or services	Trademark Act Section 1
Registration barred by claim or issue preclusion	Mayer/Berkshire Corp. v. Berkshire Fashions Inc., 424 F.3d 1229, 76 USPQ2d 1310 (Fed. Cir. 2005)
Fraud on the USPTO	In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	Jazzy Boba		
Goods/Services	Chemical flavorings in liquid form used to refill electronic cigarette cartridges; Electronic cigarette liquid (e-liquid) comprised of flavorings in liquid form, other than essential oils, used to refill electronic cigarette cartridges; Cartridges sold filled with chemical flavorings in liquid form for electronic cigarettes.		

Related Proceedings	Vapexplosion, LLC v. Marina Vape, LLC, et al., Los Angeles Superior Court case no. SC125159; and Marina Vape, LLC v. Brian Nashick and Jazzy Boba, LLC, U.S.D.C. case no. 2:16-cv 1028 (C.D. Cal.)
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Attachments	NOO.Jazzy.001.pdf(160871 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/AMM/
Name	Alexander Merino, Esq.
Date	09/14/2016

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3 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
4 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
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7 JAZZY BOBA, LLC, AND
8 VAPEXPLOSION, LLC,

9 Opposers,

10 v.

11 MARINA VAPE, LLC,
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13 Applicant.
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Opposition No. ____

Serial No. 86771515

Filed: September 29, 2015

Mark: JAZZY BOBA

Published: May 17, 2016

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18 **NOTICE OF OPPOSITION**
19

20 Commissioner for Trademarks

21 P.O. Box 1451

22 Alexandria, VA 22313-1451

23 Sir or Madam:

24 Opposers Jazzy Boba, LLC, a Florida limited liability company, having an
25 address of 2640 SW 54th Street, Fort Lauderdale, FL 33312 (“JB LLC”), and
26 Vapexplosion, LLC, a Florida limited liability company, having an address of 2640
27 SW 54th Street, Fort Lauderdale, FL 33312 (“Vapexplosion”), believe that they
28

1 will be damaged by registration of the mark JAZZY BOBA in International Class
2 34 for “Chemical flavorings in liquid form used to refill electronic cigarette
3 cartridges; Electronic cigarette liquid (e-liquid) comprised of flavorings in liquid
4 form, other than essential oil, used to refill electronic cigarette cartridges;
5 Cartridges sold filled with chemical flavorings in liquid form for electronic
6 cigarettes,” shown in application Serial No. 86771515, filed September 29, 2015
7 by Applicant, Marina Vape, LLC (“Marina”), upon information and belief, a
8 California limited liability company, having an address at 4943 McConnell Ave.,
9 Suite N, Los Angeles, California 90066, and hereby oppose the same. Opposers
10 JB LLC and Vapexplosion, and their respective predecessors in interest, are
11 collectively referred to herein as the “Opposers”.

12 As grounds for opposition, Opposers allege that:

13 1. Opposers JB LLC and Vapexplosion are engaged, among other things,
14 in the business of manufacturing and selling electronic cigarette liquid (“e-liquid”)
15 and related products, including under the marks JAZZY BOBA (the “Jazzy Mark”)
16 and DEWWY BOBA (the “Dewwy Mark”).

17 2. Opposers first used the Jazzy Mark for e-liquid in interstate commerce
18 in the United States since at least as early as October 2014, and intend to continue
19 so using the Jazzy Mark in the future.

20 3. In or about December 2014, Opposers entered into an agreement with
21 Sam Rosenberg (“Rosenberg”) to allow Rosenberg to manufacture and sell e-
22 liquids under Opposers’ Jazzy Mark.

23 4. Upon information and belief, Rosenberg is an owner and principal of
24 Applicant Marina.

25 5. Commencing in or about March 2015, Rosenberg began defrauding
26 Opposers by concealing his sales of products under Opposers’ Jazzy Mark.

1 6. Opposers, through their rights in and use of the Jazzy Mark prior to
2 Applicant Marina's filing of its application to register the mark JAZZY BOBA, has
3 built up a valuable goodwill and reputation in connection with its Jazzy Mark.

4 7. Applicant Marina's proposed mark JAZZY BOBA is identical in
5 appearance, sound, connotation, and commercial impression to Opposers' Jazzy
6 Mark.

7 8. Applicant Marina's goods and Opposers' goods under their respective
8 marks are identical, similar and/or related in that they consist of e-liquids, and/or
9 nearly identical products, and may emanate from a common source.

10 9. Opposers allege that Applicant Marina has no reasonable basis for its
11 application to register the proposed mark JAZZY BOBA, and in filing said
12 application Marina intends to defraud the USPTO.

13 10. Opposers believe that they will be damaged by the registration of
14 Applicant Marina's proposed mark JAZZY BOBA and opposes application Serial
15 No. 86771515 because Applicant Marina's registration and use of its proposed
16 mark JAZZY BOBA in connection with the goods set forth in application Serial
17 No. 86771515 is likely to cause confusion, to cause mistake, and to deceive
18 customers, potential customers and others, thereby injuring Opposers and the
19 consuming public and jeopardizing the valuable goodwill and reputation Opposers
20 have built up in connection with the Jazzy Mark.

21 11. Accordingly, for each and every reason stated above, Opposers
22 believe that they will be damaged by the registration of Applicant Marina's
23 JAZZY BOBA mark and opposes application Serial No. 86771515.

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1 WHEREFORE, Opposers JB LLC and Vapexplosion pray that this
2 opposition be sustained and that the registration of Applicant Marina's JAZZY
3 BOBA mark in application Serial No. 86771515 be refused.

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5 SEPTEMBER 14, 2016

6 Respectfully submitted,
7 MERINO YEBRI, LLP

8
9 By: /Alexander Merino/

10 ALEXANDER MERINO

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12 LLC AND VAPEXPLOSION, LLC

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